

REMARKS

The inventor has discovered a very effective holder that allows one to quickly and safely retrieve and replace a razor blade.

SIGNIFICANT PROBLEMS SOLVED

If one made a razor receptacle deep, the razor would be hidden and the user would never know what to expect when placing fingers inside that receptacle. If the razor blade were placed in the receptacle with the sharp edge up (or to the right or left), the user is likely to suffer a serious cut when fishing for the razor blade.

Even if the receptacle were shallow and the user observed the safe edge of the blade protruding from the receptacle, grasping that safe edge is not straightforward. One should not encourage the user to pinch the right and left edges of the razor blade with forefinger and thumb. This grip is awkward and requires the user's other hand to reposition the blade, which is not only time-consuming, but increases the chance for a cut. On the other hand, placing fingers behind the blade and sliding it up along the front of the holder opening creates a force tending to pull the holder off a wall or other structure on which the holder may be mounted.

The inventor discovered that shelf 16 solves these problems if used with a correctly proportioned receptacle. As mentioned in the original specification a user can grasp the razor blade R "by placing a thumb on the front blade and a forefinger over the top, resting on the shelf 16. The thumb can then be lifted to pull out the first blade R, using a motion as if dealing cards." Page 9, lines 5-8. When done this way, the safe edge of the blade is automatically held correctly between the user's forefinger

and thumb, ready for use. Also, this motion requires the thumb to be pressed against the holder, avoiding any tendency to pull the holder off the wall or other supporting structure.

Also, the holder is convenient for placing a razor blade back in the receptacle. Because the receptacle upwardly diverges, the mouth of the receptacle is large enough to quickly receive the razor without fussing.

STOCKTON

Stockton (U.S. Patent 1,614,265) does not teach making a razor receptacle sized to hold and to keep exposed and accessible an upper edge of the razor.

Stockton teaches folding a cardboard ashtray into a deep pocket, made from panels 17 and 21. Because of this excessive depth, matchbook 36 would quite possibly fall below the rim of panel 21 and be difficult to observe and retrieve. In order to stay out of the deep pocket, the matchbook 36 is held high by inserting its V-shaped slit 35 into slot 34 on panel 17.

Moreover, Stockton's pocket is not inherently able to deal with a razor blade. A razor blade oriented sharp edge up is about half the height of a matchbook. Thus, it is clear from inspecting Stockton's drawings that a razor thus placed in Stockton's pocket will be far below the top edge of panel 21, and hidden from view. Thus a user fishing for a razor blade in Stockton's pocket cannot easily determine the blade orientation and runs a high risk of getting cut.

To make matters worse, any solid object placed into Stockton's pocket will have a tendency to sink low because the bottom edge of panel 17 is free to bow inwardly

when a person tries to grasp the object. In fact, in a cardboard model of the Stockton holder made by the undersigned, small downward pressure placed on a thin object in the Stockton pocket causes such bowing of panel 17 that the object easily slides under the panel 17 where the object is now even lower and more difficult to retrieve.

Thus Stockton does not teach building a receptacle to hold an object prominently and instead teaches just the opposite.

PRESS

Press (U.S. Patent 1,019,275) does not teach making a razor receptacle sized to hold and to keep exposed and accessible an upper edge of the razor.

The illustrated paper donation envelopes are obviously large enough to hold checks and bills. Any razor blade placed inside one of these envelopes would be completely hidden from view. Thus, a user would be unaware of a dangerously oriented blade and would be exposed to a risk of injury when fishing around for a razor blade.

HASWELL

Haswell (U.S. Patent 4,307,809) does not teach making a razor receptacle sized to hold and to keep exposed and accessible an upper edge of the razor.

If the Examiner will reconsider the structure of Figure 5, he will realize that the illustrated cassette rack is completely open and only has a projection 60, a bar 54, and a lip 53. Essentially, the rack of Figure 5 is built much like a ladder. Any razor blade placed into this rack would simply fall to the floor.

The Examiner would apparently concede that the embodiment of Figure 1 does

not have a shelf. Moreover, any razor blade that might drop into one of the bins 16 or 17 would be hidden and could not be retrieved by hand. The user would need to turn the rack upside down to retrieve the razor blade.

WOOLNOUGH

This reference (U.S. Patent 6,092,673) shows a simple box to hold leaflets. Since it must be large enough to hold leaflets the box will not provide a razor receptacle sized to hold and to keep exposed and accessible an upper edge of the razor. In fact, if a razor blade was placed in this box it would simply fall through the hole in panel 13 that was created by punching out tongue 12.

INHERENCY

For each of the references, the Examiner concludes by saying the reference shows a receptacle that is "inherently capable of holding razor blades of an appropriate size smaller than the receptacle." This is not the inherency that the Examiner must show. That would be much too easy. After all, a coffee cup, a dumpster and the Grand Canyon will hold a razor blade.

Inherency must relate to the claimed feature of "a receptacle sized to hold at least one razor blade and to keep exposed and accessible an upper edge thereof," as recited in claim 1. In *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 20 U.S.P.Q.2d 1746 (Fed. Cir. 1991)(blow molded ribs not inherently hollow) the CAFC explained that:

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that

the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.

Id. at 1268, 20 U.S.P.Q.2d at 1749. The Examiner has yet to offer any evidence, much less clear evidence, that the structure of the cited references can inherently hold a razor blade and leave its upper edge exposed and accessible.

On the other hand, Applicant just offered evidence that the upper edge is not exposed and accessible in the cited prior art. It must be stressed however, that the burden of providing clear evidence is on the Examiner. Nevertheless, when an applicant actually offers rebuttal evidence, the Examiner must respond with affirmative extrinsic evidence of such an overwhelming quality that, overall, the evidence supporting the Examiner's position is clear.

In the *Continental* case the Court further warned that "inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Id.* at 1269, 20 U.S.P.Q.2d at 1749 (quoting *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981)).

Applicant submits that the Examiner's showing does not establish a probability or possibility of exposure and accessibility. However, even if the Examiner did show a probability or possibility of latching, such a showing is insufficient evidence to sustain the Examiner's position under the CAFC's holding in *Continental*.

NON-ANALOGOUS ART

The references cited by the Examiner are non-analogous art. The references are not within the field of the inventor's endeavor.¹ The cited art concerns an ashtray (Stockton), a paper donation envelope (Press), a tape cassette rack (Haswell), and a leaflet dispenser (Woolnough). The test with analogous art outside an inventor's field of endeavor is whether the art pertains to the particular problem confronting the inventor.² In these situations, the law presumes knowledge only of those arts reasonably pertinent to the inventor's problem.³

Here the inventor worked at solving the problem of keeping a sharp cutting device handy. An object here is to make sure that a razor blade can be quickly and safely grasped, and returned just as easily and safely. It is difficult to imagine skilled practitioner of the razor technology examining ashtrays such as Stockton's. Furthermore, Press essentially discloses a stationery product, while Woolnough discloses a dispenser for stationery. Haswell deals with racks for tape cassettes, an entertainment product bearing no relation to a small cutting tool. The problems arising with these very different products are not reasonably pertinent to the problem addressed by Applicant's invention. A person of ordinary skill in the razor blade or sharp instrument art simply would not find the references pertinent.

¹*In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986).

²*In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

³*Id.*

CLAIM ANALYSIS

The Examiner rejects each of the non-withdrawn claims under 35 USC 102(b) based on one or more of the four references, Stockton, Press, Haswell, and Woolnough. As explained above not one of them suggests "a receptacle sized to hold at least one razor blade and to keep exposed and accessible an upper edge thereof," as recited in original claim 1. Thus, the Examiner's rejections are not well founded since a single prior art reference anticipates a claimed invention only if it discloses each and every claim element.⁴

However, the present applicant wishes to quickly conclude this prosecution and has therefore made certain amendments to claim 1 to highlight the above noted novelty and to bring it in a direction toward allowed claim 19 (although amended claim 1 is still broader than claim 19).

Amended claim 1 now recites that the receptacle has a "forward face being sized to allow the razor blade to freely project outwardly at an elevation higher than said forward face," a feature clearly absent from all the cited references.

Amended claim 1 now also recites that the holder is "marked with a reminder message" and the holder has "a shelf extending back from the opening of said receptacle to establish clearance for finger access behind the opening of said receptacle." As noted above, the references do not show all these features. For example, only Press has a message, but the message simply relates to an envelope

⁴*Structural Rubber Prod. Co. v. Park Rubber Co.*, 749 F.2d 840, 223 USPQ 1264 (Fed. Cir. 1984)

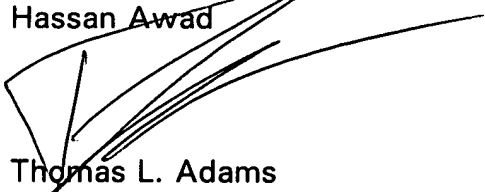
that has basically no relationship to a razor holder. Moreover, the claimed shelf must be considered in combination with a receptacle arranged to allow the razor blade to project "at an elevation higher than said forward face," as recited in amended claim 1. This combination is nowhere suggested by the cited art and therefore the cited art cannot suggest using a shelf to easily remove a razor blade from holder.

The other claims depend from claim 1 and distinguish over the cited art for least the reasons given in connection with amended claim 1.

CONCLUSIONS

It is believed that the foregoing fully responds to the objections and rejections entered by the Examiner and places this application in condition for allowance, which action is respectfully requested.

Respectfully submitted,
Hassan Awad



Thomas L. Adams
Registration No. 27,300
973-463-0100

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Thomas L. Adams
Registration No. 27,300